



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit and an order to retain the security deposit in full satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary and procedural matter

At the outset of the hearing the tenant requested an adjournment as the tenant stated she was not feeling well. The landlord objected to an adjournment. As a result, the tenant request for and adjournment was not granted as it would be unfair and prejudicial to the landlord.

At the outset of the hearing the documentary evidence was discussed. The landlord stated that he served the tenant by registered mail with their evidence package that was sent on September 17, 2013. The tenant stated that she did not receive any evidence from the landlord and was unable to proceed. However, the landlord confirmed with Canada post track history that their evidence package was successful delivered to the tenant on October 18, 2013. The tenant responded that it was not in their file. The tenant did not deny signing for a package on October 18, 2013.

In this case, I find the tenant evidence to be conflicting and the credibility of the tenant is questioned. The tenant first stated that she did not receive any evidence from the landlord. However, after the landlord was able to confirm the package was signed for by the tenant on October 18, 2013, the tenant stated that it was not in her file.

Even, if I accept the tenant evidence, which I do not, refusal or neglect to pick up the evidence package is not grounds for an adjournment or review. I find the tenant was served with the landlord evidence within the required time limit under the Act.

Therefore, the tenant request for an adjournment is denied as it would be unfair and prejudicial to the landlord.

The tenant confirmed they did not submit any documentary evidence or provide any documentary evidence to the landlord. The tenant again requested an adjournment in order for her to submit her evidence. However, under the Residential Tenancy Branch Rules of Procedure the parties are required to provide their evidence to support their position prior to the hearing, in accordance with the deadlines set out in the rules of procedures. As a result, the tenant request for an adjournment was denied as it would be unfair and prejudicial to the landlord.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit and pet damage deposit in full satisfaction of the claim?

### Background and Evidence

The tenancy began on February 2013. Rent in the amount of \$1,250.00 was payable on the first of each month. A security deposit and a pet damage deposit totaling \$800.00 were paid by the tenant. The tenancy ended on June 29, 2013.

The parties agreed a move-in and move-out condition inspection was completed, however, the tenant did not sign the landlord's copy of the move-out inspection report as she did not agree the report fairly represented the property.

The landlord testified that tenant was given permission to have 2 dogs, which were to remain in a kennel outside in an area that was allocated for them as the tenant had informed them that they were involved in dog breeding.

The landlord testified that on April 30, 2013, they received an email from the tenant indicating her departure to be either July 1 or 15. The landlord stated that in the last week of May the tenant informed him that they would be out by July 1, 2013, and they commenced advertising the unit. Filed in evidence is the posted advertisement dated June 1, 2013.

The landlord testified that they had arranged for multiple showings in early June, but they had discovered that during the tenancy the tenant had the dogs staying in the rental unit along with a litter of puppies and the smell of dog filth was overpowering.

The landlord testified that they held an open house and they had many potential renters view the unit, however, not one of the potential rents wanted to rent due to the

overpowering smell of dog odour. The landlord stated as a result of the smell they had to stop the showings until the place was properly cleaned.

The landlord testified that the two bedrooms were painted in the hopes of eliminating the smell. The landlord stated it was then noticed that the smell was coming from the carpets even after they had been professionally steamed cleaned. The landlord stated that the carpets were required to be removed and the subfloor was required to be sealed with special paint to eliminate the smell.

The landlord submits as evidence a letter dated July 1, 2013, from a Red Seal Journeyman Carpenter which reads in part,

“... (Tenant's name) informed me that the carpeting in both bedrooms had just been professionally steam cleaned. At that time there was a odor that was notice in the bedroom that I was currently in. Upon checking the other bedroom, the odor was as strong. After smelling the actual carpet I confirmed with (name) that smell was strong and smelled like dog odor. Without cleaning option that removed the odor, (name) and I removed the carpet in both bedrooms to find the under lament contained the same odor. After removing the under lament of the carpet, I confirmed with (name) the plywood sub floor also contained the dog odor. At that time the subfloor was painted with kilz paint to seal off the odor, the odor in the two bedrooms finally dissipated.”

[Reproduced as written.]

The landlord submits as evidence a letter dated October 16, 2013, from (CK) which reads in part,

“... I attended this home in late June, 2013, for a ‘pre-listing walk-through’ with yourself and your contactor. One of the reasons for this visit was to get a consensus on the state of the carpets of both bedrooms in the front suite... Upon entering the suite, I had noted that the carpets were quite unpleasant-smelling. I had been told they were just shampooed. I did note the carpets were still quite damp but that there was a very noticeable pet-type urine smell. Due to the malodorous scent, I recommended that the carpets be dealt with in the next appropriate manner to ensure that any further Showings of this home would not be negatively impacted. A foul-smell can deter positive feedback on any property.”

[Reproduced as written.]

The landlord testified that the tenant caused damage to the walls in one of the bedrooms by not providing sufficient air circulation and causing mould to grow on two of the walls. The landlord stated he called the mould expert and he was told to spray the walls with a mixture of dish soap and water then wipe the wall, which was effective removing the mould.

The landlord stated that the mould expert also provided addition advise that he suggested such as removing the drywall to confirm there was no mould in the wall.

The landlord stated that they had purchase special filter equipment and other protective gear, such as breathable coverall and goggles to clean and make the required repair. .

The landlord testified that to paint the two bedrooms, replace the carpets, to paint the subfloor and to deal with the mould issue the total cost was \$2,176.14. The landlord stated they are not seeking a monetary order for the entire cost, however, seeks to retain the tenant's security deposit and pet damage deposit in full satisfaction of their claim. Filed in evidence are receipts.

The tenant testified that she does not agree that she is responsible for any of the costs.

The tenant stated that there was an open house on June 2, 2013 and on June 3, 2013 the landlord told her that they were concerned that the place stunk like dog. The tenant stated there mould in one of the bedroom in the corner, but stated that there was a previous issue with mould in the same area by a previous tenant.

The tenant stated that she did not agree with the work the landlord was doing yet they forged forwarding ripping out carpets and painting the entire premises, which was completed on June 29, 2013. The tenant stated the worked commenced while she had possession of the unit and that impacted her ability to complete any of the cleaning. The tenant stated the work was done at the suggestion of the real estate agent as the property was listed for sale.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The evidence of the landlord was that the two bedrooms were painted in the hopes of eliminating the dog smell. The evidence of the landlord was it was then noticed that the smell was coming from the carpets even after they had been professionally steamed cleaned. The evidence of the landlord was that the carpets were required to be replaced and the subfloor had to be painted with a special sealer to contain the animal odour. The evidence of the tenant was that she did not agree that the carpets were required to be replaced.

In this case, the evidence of the landlord was that they painted the two bedrooms in hope that the paint would eliminate the dog odour. However, painting did not eliminate the odour, as it was later determined to be coming from the carpets. The landlord provided no evidence to support that the dog odour had penetrated the paint on the walls and ceilings or that the tenant was given an opportunity to wash the walls prior to the landlord painting as the tenant had legal possession of the unit and had until the end of their tenancy to rectify the problem if one existed. The tenant is only responsible for necessary repairs that were caused by damage that they failed to repair at the end of the tenancy. Therefore, I find the landlord is not entitled to recover the cost of painting.

I accept the landlord's evidence and documentary evidence that the tenant caused damage to the landlord carpets by the carpets having an offensive dog odour.

However, under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

In this case, the landlord provided no evidence or documentary evidence of the age of the carpets, even after receiving that request from the tenant in an email dated July 23, 2013. As a result, I find the landlord has provided insufficient evidence to support the

age of the carpet in order for me to calculate what the tenant's responsibility would have been, if any.

However, I am satisfied that the subfloor was required to be sealed to eliminate any smell from dog odour. While the landlord has submitted receipts for painting and labour, I find I am unable to determine the actual amount which related to the painting of the subfloor. Further, the work was completed prior to the tenancy ending, and the tenant was not given the opportunity to paint the subfloor herself to reduce labour costs, Therefore, I find a reasonable amount for compensation based on the photographs would be **\$200.00**.

The evidence of the landlord was that the tenant caused damage to the walls in one of the bedrooms by not providing sufficient air circulation and causing mould to grow. The evidence of the landlord was that he called the mould expert and he was told to spray the wall with a mixture of dish soap and water then wipe the wall, which was effective.

The evidence of the landlord was that the mould expert also provided addition advice that he suggested such as removing the drywall to confirm there was no mould in the wall. The evidence of the tenant was that there was mould in one of the bedrooms in the corner, but stated that there was a previous issue with mould in the same area by a previous tenant. The tenant stated the worked commenced while she had possession of the unit and that impacted her ability to complete any of the cleaning.

In this case, the landlord is claiming cost for removing surface mould from two walls in one of the bedrooms. The photograph submitted confirm there was a small amount of mould on two of the walls, which appear from the lack of air circulation due to furniture being placed against the wall. I find it was the tenant's responsible to remove any surface mould from the unit, however, the landlord did not provided the tenant with the instructions provided by the mould expert and proceeded to do the work while the tenant had possession of the unit, not giving the tenant a fair opportunity to complete the work.

While, I accept there was a small amount of surface mould on the two walls, and that the landlord was proactive to ensure that there was no mould inside the walls, however, I find that the landlord cannot hold the tenant responsible for exploratory work as there was no evidence that the mould had penetrated paint or damaged the drywall.

The tenant can only be liable for work that is necessary to repair the damage and in this case, dish soap and water appeared to be sufficient. Therefore, I dismiss the landlord's claim for compensation which is related to mould.

I find that the landlord has established a total monetary claim of **\$250.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the amount of **\$250.00** in full satisfaction of the claim from the tenant's pet damage deposit and security deposit.

I order that the landlord return the balance of the tenant's deposits in the amount of **\$550.00**. Should the landlord fail to comply with my order, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord is granted a monetary award and may keep a portion of the pet damage deposit and security deposit in full satisfaction of the claim. The tenant is granted a monetary order for the balance due, should the landlord fail to comply with my order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 22, 2013

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Residential Tenancy Branch

